

JPA File No.: 07-120 I
AG Contract No.: P001 2007 004490
Project: 3-way Cyclist Stop
Section: Junction of US 191, SR 75 and
SR 78
TRACS No.: SL559 01C
**Budget Source Item No.: Local TEA
funding**
FS Agreement No. 08-CO-11030103-016

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE
APACHE SITGREAVES NATIONAL FOREST

THIS AGREEMENT is entered into this date January 25th, 2008, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State or ADOT") and the THE UNITED STATES DEPARTMENT OF AGRICULTURE, APACHE SITGREAVES NATIONAL FOREST, acting by and through its FOREST SUPERVISOR (the "Forest Service"). The State and the Forest Service are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Forest Service is empowered to enter into this Agreement by the Cooperative Funds Act of June 30, 1914, 16 U.S.C. 498, and resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Forest Service.
3. The State and Forest Service agree to participate in the development of a 3-way Cyclist Stop at the Junction of US 191, SR 75 and SR 78. The Forest Service will administer the design and construction of fully-accessible facilities, including two shaded ramadas, water hydrant/fountain, picnic tables, landscaping for grass and providing shade, facilities for one-night camping bicyclists, a vault toilet, a four-panel information kiosk and a hardened surface for a parking lot. Said improvements are collectively hereinafter referred to as the "Project."
4. The Forest Service, in order to obtain federal funds for the construction of the project, is willing to provide Forest Service funds to match federal funds in the ratio required or as finally fixed and determined by the Forest Service and FHWA, including actual construction engineering and administration costs (CE).
5. The interest of the State in the Project is in the acquisition of federal funds for the use and benefit of the Forest Service by reason of federal law and regulations under which funds for the project are authorized to be expended.
6. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement activities.

NO. 29013
Filed with the Secretary of State
Date Filed: 1-25-08
James K. [Signature]
Secretary of State
ABO

Estimated Total Project Cost**\$252,365.00****Construction** (TRACS No.: SL559 01C)

Federal-aid funds @ 94.3% (local TEA)

\$197,980.00 (Round 10 – TERC)

Forest Service match @ 5.7%

\$11,967.00

Additional Local TEA Federal Funds @ 94.3%

\$40,000.00 (vault toilet)

Additional Forest Service match @ 5.7%

\$2,418.00

Total Estimated Forest Service Funds**\$ 14,385.00**

7. The Parties hereto agree and acknowledge to the following conditions: **a)** the amounts referenced in this Agreement are subject to change and can change substantially; **b)** both parties will perform their responsibilities consistent with the Agreement; **c)** any change or modification to the Project will only occur with the mutual Agreement of the Apache Sitgreaves National Forest and the State.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The Forest Service will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction, incorporating State comments as appropriate. Design of the Project shall be at the Forest Service's expense.

b. If such Project is approved for construction by FHWA and the funds are available for construction, hereby designate the State as authorized agent for the Forest Service. Should costs exceed the maximum federal funds available, it is understood and agreed that the Forest Service will be responsible for any overage.

c. With the aid and consent of the State and the FHWA, proceed to advertise for, receive and open bids. Subject to the concurrence of FHWA and the State, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

d. Request reimbursement from the State no more than monthly for incurred, eligible costs expended by the Forest Service for Project up to the capped Federal funds of \$237,980.00, utilizing ADOT's Progress Payment Report form. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the Forest Service.

e. Provide personnel to administer and supervise construction, and all construction project change orders are to be copied to the State.

f. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the Forest Service. Such changes require the prior approval of the State.

g. Upon completion of the Project, maintain said Project facilities and landscaping, providing electrical power for any Project lighting and irrigation.

h. Provide landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established, at the completion of the Project.

2. The State will:

a. Be the authorized agent for the Forest Service and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction.

b. Enter into a Project Agreement with FHWA on behalf of the Forest Service covering the work encompassed in said construction contracts and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Forest Service will be responsible for any overage.

c. Upon execution of this Agreement, and within 30 days upon receipt and approval of an invoice from the Forest Service for eligible and incurred costs, remit to the Forest Service for costs associated to complete the Project in an amount not to exceed capped federal funds of \$237,980.00. Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

d. Not be obligated to maintain said Project, should the Forest Service fail to budget or provide for proper maintenance as set forth in this Agreement.

e. Invoice the Forest Service, should the Forest Service fail to complete the Project and use the federal funds for other purposes. Any federal funds used not specifically for said Project will be reimbursed to the State.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein, but not to exceed 5 years from the date of the last signature unless extended. This Agreement may be cancelled upon mutual agreement, if the proposed objectives outlined in the Agreement are not being met, with a thirty-day (30) written notice to either party. Modifications to this Agreement shall be made by mutual consent of the Parties, prior to any changes being performed. The Forest Service and the State are not obligated to fund any changes not properly approved in advance.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. The United States Federal Government, acting as the Forest Service, does not have the authority to indemnify and hold harmless the State of Arizona from any and all claims, liabilities, losses, damages, charges, etc. The State of Arizona does not have the authority to indemnify and hold harmless the United States Federal Government from any and all claims, liabilities, losses, damages, charges, etc. To the extent permitted by law, the State of Arizona will be responsible for errors, omissions and negligence of its employees. The United States Federal Government will be responsible for errors, omissions and negligence of its employees to the extent provided by Congress under the Federal Tort Claims Act 28 U.S.C. 1346 (b), 2671-2680, as amended by P.L. 89-506, 80-Stat. 306.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. Applicable laws of the State and Federal Government shall govern the rights of the parties with respect to the performance of this Agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this Agreement, compliant with the applicable laws and regulations of the

State and Federal Government, and acceptable to the State and Federal Government. Such process will include a provision for arbitration.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Apache Sitgreaves National Forest
Attn: Clifton Ranger District
P.O. Box 397240 AZ 75
Duncan, Arizona 85534
(928) 687-1301
(928) 687-1614 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Improvements placed on National Forest System land at the direction of either of the parties shall thereupon become the property of the United States, and shall be subject to the same regulations and administration, including maintenance, of the Forest Service as other National Forest improvements of a similar nature. No part of the instrument shall entitle the State to any share of the interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.

10. This instrument in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

11. Contributions authorized by the State for use by the Forest Service which are not spent or obligated for projects(s) approved under this instrument will be refunded to the State or authorized for use for new projects as agreed with the State, pursuant to Part II (A) and (B) (amendments).

12. Any State contributions made under this instrument do not by direct reference or implication convey Forest Service endorsement of the State's projects or activities.

13. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

14. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

15. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

16. By signature below, the State and the Forest Service certify that the individuals listed in this document as representatives of the State and the Forest Service are authorized to act in their respective areas for matters related to this Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

THE UNITED STATES DEPARTMENT OF STATE OF ARIZONA
AGRICULTURE, Apache Sitgreaves National Forest Department of Transportation

By

Deryll D. Jerome

12/31/07

riding

Forest Supervisor

The authority and format of this instrument
have been reviewed and approved for signature.

By

Douglas A. Forstie


DOUGLAS A. FORSTIE, P.E.

Deputy State Engineer, Operations

By

Keith Quon 12/21/07

G:\Apache Sitgreaves National Forest
3-way Cyclist Stop
Initial Draft 11/15/07 ghc
Draft 2, add'l funding 12/18/07 ghc
FINAL approved by AG 12/20/07 ghc

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007004490 (**JPA 07-120-I**), an Agreement between public agencies, i.e., The State of Arizona and The United States Department of Agriculture Apache Sitgreaves National Forest, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 15, 2008

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:121309
Attachment